

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHRISTOPHER A. JONES,

Plaintiff,

v.

HOWARD SKOLNIK, et al.,

Defendants.

3:10-cv-00162-LRH-VPC

ORDER

Before the court is the Report and Recommendation of U.S. Magistrate Judge Valerie P. Cooke (#67¹) entered on October 20, 2011, recommending that Defendants' Motion to Dismiss (#39) filed on April 8, 2011, be denied without prejudice. Defendants filed their Objections to Magistrate Judge's Report and Recommendation (#69) on October 25, 2011. Plaintiff filed his Oppositions to the Defendants' Objections to the Magistrate's Report and Recommendations (#78) on November 16, 2011, and also filed his Objections to Magistrate Judge's Reports and Recommendation (#67) and (#72) (#80) on November 18, 2011. This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The court has conducted its *de novo* review in this case, has fully considered the objections of

¹Refers to court's docket number.

1 the Plaintiff and Defendants, Plaintiff's response, the pleadings and memoranda of the parties and other
2 relevant matters of record pursuant to 28 U.S.C. § 636 (b) (1) (B) and Local Rule IB 3-2. The court
3 determines that Defendants' objections to the Magistrate Judge's Report and Recommendation (#67)
4 entered on October 20, 2011, should be sustained and the matter referred to the Magistrate Judge for
5 reconsideration on the merits of Defendants' motion to dismiss.

6 The recommendation to deny Defendants' motion to dismiss is based on the determination that
7 Defendants had failed to submit any properly authenticated evidence in support of their motion, despite
8 the fact that Defendants relied on exhibits that are attached to Plaintiff's amended complaint. This
9 determination is erroneous. "A copy of a written instrument that is an exhibit to a pleading is a part
10 of the pleading for all purposes." Fed. R. Civ. P. 10(c). Accordingly, in ruling on a motion to dismiss,
11 a court may consider not only the allegations contained in the pleadings but also "exhibits attached to
12 the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756,
13 763 (9th Cir. 2007). Moreover, in order to prevent plaintiffs from avoiding dismissal "by deliberately
14 omitting references to documents upon which their claims are based," the court may also consider
15 documents not physically attached to the complaint if (1) the documents' authenticity is not contested,
16 and (2) either the allegations of the complaint "explicitly incorporate[]" the documents' contents, or
17 the complaint "necessarily relies" on the documents, in that they are "crucial" or "essential" to the
18 plaintiff's claims. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998) (citing *Branch v.*
19 *Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)). Here, because the exhibits in question were attached to
20 Plaintiff's amended complaint, they are considered a part of the pleadings and are therefore properly
21 considered on a motion to dismiss without further authentication.

22 IT IS THEREFORE ORDERED that Defendants' Objection (#69) to the Magistrate Judge's
23 Report and Recommendation (#67) entered on October 20, 2011, is hereby sustained, and the matter
24 is REFERRED to the Magistrate Judge for reconsideration of Defendant's Motion to Dismiss (#39).

25 IT IS FURTHER ORDERED that Defendants' Motion to Strike Plaintiff's Oppositions to
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1 Defendants' Objections (#81) and Defendants' Motion to Strike Unauthorized Portions of Plaintiff's
2 Objections (#83) are DENIED as moot.

3 IT IS FURTHER ORDERED that Plaintiff's Objections (#86) to this Court's Order denying
4 Plaintiff's request for an extension of time to file objections, construed as a motion for reconsideration,
5 is DENIED as moot.

6 IT IS SO ORDERED.

7 DATED this 11th day of January, 2012.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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